

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
10

11
12 FIFTY-SIX HOPE ROAD MUSIC, LTD.,
13 et al.,

14 Plaintiffs,

15 v.

16 MAYAH COLLECTIONS, INC., et al.,

17 Defendants.
18

Case No. 2:05-CV-1059-KJD-GWF

ORDER

19 On April 3, 2007, Plaintiffs filed a Supplement (#88) to its earlier Motion for Leave to File
20 First Amended Complaint (#74). On April 23, 2007, Defendants filed the instant Motion to Strike
21 (#94), alleging that Plaintiffs' Supplement is actually a new complaint, and as such should be
22 stricken pursuant Fed. R. Civ. P. 15. The Court agrees.

23 **I. Background**

24 Plaintiffs filed a First Amended Complaint (#64) on October 10, 2006, which the Court
25 subsequently ordered stricken pursuant to Fed. R. Civ. P. 15, for failure to seek leave of the Court, or
26 written consent of the adverse parties before filing (#66). Subsequently, on January 2, 2007,

1 Plaintiffs filed a Motion for Leave to File First Amended Complaint (#74) which the Court also
2 denied due to undue delay and futility (#102). Plaintiffs filed the immediate Supplement to their
3 Motion for Leave to File First Amended Complaint on April 3, 2007. The Supplement seeks to add
4 claims on behalf of Miles Davis Properties (“MDP”), and to drop all claims against Tunes,
5 Incorporated.

6 **II. Analysis**

7 Rule 15 of the Federal Rules of Civil Procedure allows a plaintiff to amend their complaint
8 once, as a matter of right, prior to the filing of a responsive pleading. See Fed. R. Civ. P. 15(a);
9 Martinez v. Newport Beach City, 125 F.3d 777, 785 (9th Cir. 1997). Once a responsive pleading has
10 been served however, a plaintiff must then seek leave of the court or written consent of the adverse
11 party before any amendments may be made. See Fed. R. Civ. P. 15(a); Glick v. Koenig, 766 F.2d
12 265, 268 (7th Cir. 1985).

13 Here, because Plaintiffs’ Supplement seeks to add claims by a new party, the Court finds that
14 the Supplement is better characterized as an Amended Complaint.¹ Because Plaintiffs’ Motion for
15 Leave to File First Amended Complaint was denied, and because a responsive pleading has been
16 filed to in this matter, Pursuant to Fed. R. Civ. P. 15, Plaintiffs are required to seek the leave of the
17 Court or written permission by the opposing party to file an amended complaint. Here, Plaintiff has
18 sought neither. Therefore, Plaintiffs’ Supplement (Second Amended Complaint) is not properly
19 before the Court. Moreover, on May 7, 2007, the Court denied Plaintiffs’ Motion for Leave to File
20 First Amended Complaint; therefore, any attempt to supplement said Motion is now moot.

21
22
23
24
25 ¹Plaintiffs admit that the claims sought to be added on behalf of MDP were purposefully omitted from the
26 Motion for Leave to File First Amended Complaint because Plaintiffs were unsure whether MDP intended to pursue its
claims in the action. (Pls.’ Supplement at 2). Plaintiffs further admit that while MDP has since acquired new counsel,
they have been unable to ascertain whether MDP intends to pursue its claims in this action. Id.

1 Accordingly, IT IS HEREBY ORDERED that Defendants The Tunes Company's Motion to
2 Strike (#94) is **GRANTED**.

3 IT IS FURTHER ORDERED that Plaintiffs' Supplement to Motion for Leave to File First
4 Amended Complaint (# 88) is **STRICKEN**.

5
6 DATED this 10th day of May 2007.

7
8 
9

10 Kent J. Dawson
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26